IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

[Court's order whether the case is approved for reporting or not under Chapter VIII Rule 32 (2) (b)]

Description of the case

Writ Petition No. 84 (SS) of 2007

Surya Prakash Gupta **.....Petitioner.**

Versus

Secretary, Urban Development,
State of Uttaranchal,
Secretariat, Dehradun and others. **.....Respondents**

Approved for reporting

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Not approved for reporting

Date of Decision: February 14, 2007

Initial of Judge

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IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 84 (SS) of 2007

Surya Prakash Gupta,
aged about 58 years,
S/o late Sri R.D. Gupta at present
posted as Sanitary & Inspector,
Municipal Board,
Haldwani, Nainital. **.....Petitioner.**

Versus

1. Secretary, Urban Development, State of Uttaranchal, Secretariat, Dehradun.
2. Commissioner & Director, Local Bodies, Uttaranchal, Dehradun.
3. The Department of Vigilance through its Director, Government of Uttaranchal, Dehradun.

.....Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri C. D. Bahuguna, learned counsel for petitioner and Sri N.P. Shah, learned Standing Counsel for State of Uttarakhand on behalf of respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

1. *to issue the writ, order or direction in the nature of Certiorari quashing the impugned order of suspension dated 27.12.2006 issued by respondent no. 1, contained in Annexure no. 1 to this petition.*
2. *to issue the writ, order or direction in the nature of Mandamus commanding the respondent not to proceed with the departmental inquiry against the petitioner*

pursuant to the impugned order dated 27.12.2006 passed by the Secretary, Urban Development.

3. *to issue the writ, order or direction in the nature of mandamus commanding the respondents to relieve the petitioner for State of U.P. pursuant to the list of Final Allocation of employee of the Municipal Boards, Uttaranchal dated 19.06.2006 contained in Annexure no. 6 to the writ petition and let the Govt. of U.P. the employer of the petitioner, to take decision in matter of the allegations leveled against the petitioner.*

4. *to issue any other writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.*

5. *award cost of the present writ petition to the petitioner.*

By order dated 27.12.2006 passed by Secretary, Urban Development, State of Uttaranchal, the petitioner, who was working as Sanitary and Food Inspector, in the Municipal Board, Haldwani, District – Nainital, has been placed under suspension. The said suspension order was passed under Rule 4 (3) (a) of U.P. Government Servant (Discipline and Appeal) Rules, 1999. rule 4 (3) (a) provides as under:

"A Government servant shall be deemed to have been placed or, as the case may be, continued to be placed under suspension by an order of the Authority competent to suspend, with effect from the date of his detention, if he is detained in custody, whether the detention is on criminal charge or otherwise, for a period exceeding forty eight hours".

The Secretary, Urban Development, State of Uttaranchal passed the aforesaid suspension order because the petitioner was put behind the bar for more than 48 hours in connection

with case crime no. 5600 of 2006 registered under section 7/13 (1) D read with Section 13 (2) of Prevention of Corruption Act, 1988.

The suspension order has been challenged by the petitioner on various grounds. First, that the petitioner was released on bail on 21.12.2006 and there was no occasion for the Secretary, Urban Development, State of Uttaranchal to invoke the deeming provision for suspension, as the suspension order was passed by the Secretary, Urban Development, State of Uttaranchal on 27.12.2006 much after the petitioner was release on bail. Second ground on which the petitioner has attacked the suspension order is that suspension order does not even faintly or remotely suggests that departmental inquiry is contemplated against the petitioner and since no departmental inquiry is contemplated against the petitioner and it is not known how long it would take to conclude criminal trial against the petitioner, the suspension order cannot continue for such a lung period even after releasing the employee on bail.

Learned counsel for the petitioner has relied on the judgment of Allahabad High Court in the case of Devendra Kumar Gaur Vs. Executive Engineer reported in 1999 (2) UPLBEC 1631 wherein the court has held that since no departmental inquiry is contemplated against the petitioner and petitioner has already been released on bail, thus, petitioner was entitled to join his duties with immediate effects.

He has further placed reliance on the judgment of Allahabad High Court passed in the case of Ram Chetan Vs. State of U.P. and others reported in 1996 (1) UPLBEC 416 wherein the court has held that the suspension during period a

Government servant is in jail should not be extended when Government Servant is enlarged on bail

Learned counsel for the petitioner has submitted that suspension order has not been passed by the Appointing Authority and the Appointing Authority of the petitioner is Director, Local Bodies whereas the suspension order has been passed by Secretary, Urban Development, State of Uttaranchal and as such, suspension order is not sustainable in the eyes of law.

In this context he has relied upon the judgment of Hon'ble Supreme Court in the case of "The Purtabpore Co. Ltd. Vs. Cane Commissioner of Bihar and others" reported in AIR 1970 SC 1896 and Commissioner of Police, Bombay Vs. Gordhandas Bhanji (1952) SCR 135.

It is well settled law that the Appointing Authority can place the employee under suspension. The services of petitioner, who was working Sanitary and Food Inspector, Municipal Board, Haldwani, are governed by U.P. Palika (Centraliesed) Service Rules 1966. Rule 2 (1) defines Appointing Authority, which is the State Government. Since the order has been passed by the State Government I do not agree with the argument of learned counsel for the petitioner that the suspension order has not been passed by the competent authority.

Learned counsel for the petitioner has submitted that power may have been delegated by the Secretary, Urban Development, State of Uttaranchal to the Director. In support of his argument he has relied upon the appointment letter and confirmation letter of the petitioner issue by the Director and not by the Secretary, Urban Development, State of Uttaranchal. However, he not able to show any document, which could show that

the power has been delegated to the Director, Local Bodies, U.P. Lucknow.

It is not disputed by the learned Standing Counsel that the petitioner was released on bail by the order dated 21.12.2006 passed High Court and impugned order has been passed on 27.12.2006. It is also not disputed that no charge-sheet has been filed in case crime no. 5600 of 2006 registered under section 7/13 (1) D read with Section 13 (2) of Prevention of Corruption Act, 1988 and in fact there is no mention in the impugned order that inquiry has been contemplated or not.

In these circumstances, I think it just and proper to direct the petitioner to invoke Rule 4 (3) (b) of U.P. Government Servant (Discipline and Appeal) Rules, 1999 which provides that the Government Servants after the release from the custody, may inform in writing to the Competent Authority about his detention and may also make representation against the deemed suspension. The Competent Authority shall, after considering the representation in the light of the facts and circumstances of the case as well as provision contained in this rule, pass appropriate order regarding continuing the deemed suspension from the date of release from custody or revoking or modifying it.

Learned counsel for the petitioner has submitted that he has already made representation dated 24.01.2007 Rule 4 (3) (b) of U.P. Government Servant (Discipline and Appeal) Rules, 1999 before Competent Authority and the same is annexed as Annexure no. 17 to the writ petition.

In view of the aforesaid facts and circumstances, I direct the respondent no. 1 i.e. Secretary, Urban Development, State of Uttaranchal to take decision on the representation of the

petitioner dated 24.012007 in the light of observations made above in the judgment within a period of fifteen days' from the date of production of certified copy of this order.

With this direction, the writ petition and interim relief application no. nil of 2007 is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J)

February 14, 2007
Sksharma